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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 SHARON BARNUM; ROBERT SUSTRIK,
8 and all similarly situated individuals,

9 Plaintiffs,

10 v.

11 EQUIFAX INFORMATION SERVICES,
12 LLC,

13 Defendant.

Case No. 2:16-cv-02866-RFB-NJK

ORDER

14 **I. INTRODUCTION**

15 Plaintiffs Sharon Barnum and Robert Sustrik sue Defendant Equifax Information Services,
16 LLC for alleged violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*
17 Before the Court are three contested motions: Defendant’s Motion for Summary Judgment, ECF
18 No. 148; (2) Plaintiffs’ Motion to Certify Class, ECF No. 150; and (3) Plaintiffs’ Motion for Partial
19 Summary Judgment, ECF No. 154.

20 As a preliminary note, this matter was originally titled Cabebe v. Equifax Information
21 Services, LLC. The original plaintiff has been terminated from this matter and replaced with the
22 currently named Plaintiffs. Thus, the Court instructs that the caption in this matter shall now read
23 as reflected above.

24 **II. PROCEDURAL BACKGROUND**

25 Jerry Cabebe sued Defendant on December 11, 2016. ECF No. 1. Three amended
26 complaints were filed, the third of which terminated Cabebe from the matter. ECF Nos. 5, 29, 39.
27 Plaintiffs filed the operative complaint, the Fourth Amended Complaint, on March 29, 2018. ECF
28 No. 112. In the Fourth Amended Complaint, Plaintiffs assert two claims against Defendant: (1) a

1 violation of the FRCA and (2) a request for declaratory relief under 28 U.S.C. § 2201 that
2 Defendant violated FRCA. Id. Plaintiffs bring the claims on behalf of a proposed class of
3 consumers. Id.

4 Now, Defendant moves for summary judgment, and Plaintiffs move for partial summary
5 judgment. ECF Nos. 148, 149, 154, 155, 161. Both parties opposed the competing motion and
6 filed corresponding replies. ECF Nos. 174, 175, 173, 185, 187. Defendant also filed a sur-reply
7 after obtaining leave to so from the Court. ECF Nos. 213, 214.

8 In addition to their Motion for Partial Summary Judgment, Plaintiffs move to certify a
9 proposed class under Federal Rule of Civil Procedure (“Rule”) 23. ECF No. 150. Defendant
10 opposed, and Plaintiffs replied. ECF Nos. 176, 178, 180, 181, 188, 189.

11 **III. UNDISPUTED FACTS**

12 The Court finds the following facts to be undisputed. As defined by the FCRA, Defendant
13 is a credit reporting agency (“CRA”) and Plaintiffs are consumers.

14 **a. Defendant’s Reinvestigation Procedure**

15 When a consumer disputes information reflected on a credit report, Defendant opens an
16 Automated Consumer Interview System (“ACIS”) case to conduct a reinvestigation into the
17 information provided by a furnisher. The ACIS case details the process of the reinvestigation.

18 After completion of the reinvestigation, Defendant generates an electronic file containing
19 a reinvestigation results letter and transmits the file to nonparty Fidelity National Card Services
20 Inc. Defendant contracts with Fidelity National to complete the mailing of reinvestigation results
21 letters to consumers. Under the contract, Fidelity National prints and mails the reinvestigation
22 results letter to the consumer.¹ The contract governing Fidelity National’s services has been

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24 ¹ In relation to the mailing process, the Court notes that Plaintiffs list the following as
25 disputed facts: (1) Defendant automatically processes, transmits, and logs the transmission of
26 reinvestigation results letters transmitted to Fidelity National; (2) Defendant receives data
27 confirming that it successfully transmitted the files to Fidelity National; (3) Defendant’s process
28 allows it to confirm that the reinvestigation results letters are transmitted, printed, and mailed. But
Plaintiffs do not actually dispute Defendant’s characterization of its processes as summarized in
deposition testimony. Plaintiffs instead challenge the sufficiency of Defendant’s evidence given
that Defendant purges its records after sixty days if no issue is reported during the processes and
that the manuals do not outline the manner in which Defendant oversees Fidelity National’s
activities. The Court finds that the deposition testimony sufficiently describes Defendant’s typical
process absent any contrary evidence introduced by Plaintiffs to create a genuine issue of material

1 amended multiple times. Defendant, however, has been unable to provide all the amendments and
2 exhibits to the amendments.

3 Further, while Defendant's procedure for responding to mailed-in consumer disputes is
4 memorialized in its manuals, the manuals do not outline the processes or the policies in place that
5 allow Defendant to oversee Fidelity National to ensure that the FCRA obligations are satisfied.
6 But Defendant typically sends reinvestigation results letters to consumers automatically except in
7 certain circumstances, *e.g.*, when a consumer's address cannot be verified or when a consumer
8 reported fraud. If a processing error occurs during the typical process, Defendant receives notice
9 from support personnel.

10 **b. Plaintiffs' Disputes**

11 Plaintiff Barnum filed Chapter 13 Bankruptcy in January 2011, receiving a discharge on
12 May 23, 2016. In July 2016, Plaintiff Barnum received a consumer disclosure from Defendant.
13 On August 2, 2016, she sent Defendant a letter to dispute five items on the July 2016 disclosure.
14 Defendant received the letter on August 8, 2016 and began conducting a reinvestigation on
15 Plaintiff Barnum's five disputes. Per Defendant's internal database, Defendant completed the
16 investigation on August 31, 2016 at 2:45 pm. Defendant automatically generated a letter to
17 summarize the reinvestigation results. No records indicate that the reinvestigation results were
18 withheld based on an unverified address or a report of fraud. But Plaintiff Barnum did not receive
19 the results letter. Plaintiff Barnum thus sent a second dispute letter to Defendant in October 2016.
20 After completion of a second reinvestigation, Plaintiff Barnum received a results letter from
21 Defendant. One month later, Plaintiff Barnum was extended a line of credit for which she applied
22 for in August 2016—the same month in which she disputed the information reported by Defendant.

23 Like Plaintiff Barnum, Plaintiff Sustrik also filed for Chapter 13 Bankruptcy. He filed his
24 petition in July 2010 and received a discharge on November 23, 2015. After receiving a consumer
25 disclosure from Defendant on July 2, 2016, Plaintiff Sustrik sent Defendant a letter to dispute four
26 items on August 2, 2016. Defendant completed a reinvestigation and automatically generated a

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fact. But even more, for the reasons discussed herein, the Court finds that the process of printing
and mailing is not material to the decision of this Court.

1 reinvestigation results letter on August 29, 2016 at 11:45 pm. Again, no records indicate that the
2 reinvestigation results were withheld. But Plaintiff Sustrik did not receive the results letter.

3 Both Plaintiffs spent funds to make their disputes with Defendant. Both Plaintiffs also
4 experienced damages (*e.g.*, uncertainty, anguish, and anxiety) as a result of not receiving notice
5 regarding their disputes.

6 However—and importantly—neither Plaintiff disputes that the information challenged and
7 reinvestigated was in fact accurate.

8 **IV. DISPUTED FACTS**

9 The parties dispute whether: Defendant has reasonable policies and procedures in place to
10 satisfy its statutory duties of providing notice to consumers after conducting a reinvestigation
11 under the FCRA; the reinvestigation results letters regarding Plaintiffs' disputes were printed and
12 mailed, and; Plaintiffs suffered harm at the result of Defendant's actions or inactions.

13 **V. LEGAL STANDARD**

14 Summary judgment is appropriate when the pleadings, depositions, answers to
15 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
16 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
17 Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering
18 the propriety of summary judgment, the court views all facts and draws all inferences in the light
19 most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789, 793 (9th Cir.
20 2014). If the movant has carried its burden, the non-moving party “must do more than simply
21 show that there is some metaphysical doubt as to the material facts.... Where the record taken as
22 a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine
23 issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original) (internal quotation
24 marks omitted). It is improper for the Court to resolve genuine factual disputes or make credibility
25 determinations at the summary judgment stage. Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th
26 Cir. 2017) (citations omitted).

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1 **VI. DISCUSSION**

2 To begin, the Court considers the parties’ motions for summary judgment. Plaintiffs do
3 not dispute the reasonableness of Defendant’s reinvestigation into Plaintiffs’ disputes or the
4 accuracy of the information disputed by each Plaintiff. Plaintiffs instead bring their claim based
5 on the allegedly unreasonable or insufficient policies and procedures governing the oversight of
6 Fidelity National by Defendant to ensure the FCRA mandates are satisfied.

7 **A. The Fair Credit Reporting Act**

8 “Congress enacted the [FCRA] in 1970 ‘to ensure fair and accurate credit reporting,
9 promote efficiency in the banking system, and protect consumer privacy.’” Gorman v. Wolpoff
10 & Abramson, LLP, 584 F.3d 1147, 1153 (9th Cir. 2009) (quoting Safeco Ins. Co. of Am. v. Burr,
11 551 U.S. 47 (2007)). “As an important means to this end, the Act sought to make ‘consumer
12 reporting agencies exercise their grave responsibilities [in assembling and evaluating consumers’
13 credit, and disseminating information about consumers’ credit] with fairness, impartiality, and a
14 respect for the consumer’s right to privacy.’” Id. (alteration in original) (quoting 15 U.S.C. §
15 1681(a)(4)).

16 In relation to the duties of CRAs in the event a consumer disputes reported information as
17 inaccurate, Section 1681i provides:

18 [I]f the completeness or accuracy of any item of information contained in a
19 consumer’s file at a [CRA] is disputed by the consumer and the consumer notifies
20 the [CRA] directly, or indirectly through a reseller, of such dispute, the [CRA] shall,
21 free of charge, conduct a reasonable reinvestigation to determine whether the
22 disputed information is inaccurate and record the current status of the disputed
information, or delete the item from the file in accordance with [the FCRA], before
the end of the 30-day period beginning on the date on which the agency receives
the notice of the dispute from the consumer or reseller.

23 15 U.S.C. § 1681i(a)(1)(A). Thus, the CRA must conduct a reinvestigation of information
24 provided by furnishers or creditors within thirty days of receiving notice of the consumer dispute.
25 Id.

26 Additionally, Section 1681i mandates that the CRA provide notice of its decision on an
27 investigation in one of two ways. First, Section 1681i provides:

28 Upon making any determination in accordance with subparagraph (A) that a dispute

1 is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of
2 such determination not later than 5 business days after making such determination,
3 by mail or, if authorized by the consumer for that purpose, by any other means
available to the agency.

4 15 U.S.C. § 1681i(a)(3)(B). Alternatively, Section 1681i provides:

5 A consumer reporting agency shall provide written notice to a consumer of the
6 results of a reinvestigation under this subsection not later than 5 business days after
7 the completion of the reinvestigation, by mail or, if authorized by the consumer for
that purpose, by other means available to the agency.

8 15 U.S.C. § 1681i(a)(6)(A). A CRA therefore must provide either a notice that the dispute was
9 frivolous or irrelevant within five days of such a determination or a notice of the reinvestigation
10 results within five days of the conclusion of the reinvestigation.

11 “Although the FCRA’s reinvestigation provision ... does not on its face require that an
12 actual inaccuracy exist for a plaintiff to state a claim, many courts, including [the Ninth Circuit
13 Court of Appeals], have imposed such a requirement.” Carvalho v. Equifax Info. Servs., LLC,
14 629 F.3d 876, 890 (9th Cir. 2010). Thus, a plaintiff “must make a prima facie showing of
15 inaccurate reporting” to file suit under Section 1681i. Id. (citing Dennis v. BEH-1, LLC, 520 F.3d
16 1066, 1069 (9th Cir. 2008).

17 **B. Analysis**

18 Both parties move for summary judgment. Defendant moves for summary judgment,
19 contending that Plaintiffs’ claims fail for three reasons: (1) Plaintiffs cannot show that their
20 disputes contained inaccurate information; (2) Plaintiffs cannot show that Defendant failed to
21 institute reasonable processes by which consumers are provided reinvestigation results letters; and
22 (3) Plaintiffs cannot establish willfulness, limiting Plaintiffs’ recovery to actual damages and
23 attorney’s fees. Plaintiffs move for partial summary judgment, seeking a decision that Defendant
24 is liable under the FCRA for failing to provide reinvestigation results letters within the statutory
25 deadline. Plaintiffs argue that the evidence shows that Defendant failed to enact satisfactory
26 procedures, controls, or oversights to ensure that Fidelity National printed and mailed the
27 reinvestigation results letters within five days of concluding the reinvestigations.

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1 This matter is resolved by Defendant's first argument; Plaintiffs do not dispute that any
2 inaccuracies were actually reported by Defendant. Plaintiffs thus fail to satisfy the prima facie
3 element of inaccuracy as required by the Ninth Circuit for the FCRA claims arising under Section
4 1681i. Carvalho, 629 F.3d at 890; see also Dennis, 520 F.3d at 1069. While Plaintiffs argue that
5 the FCRA does not require inaccuracy as an element for a Section 1681i claim on its face and such
6 a requirement renders other provisions of the FCRA superfluous, the Ninth Circuit disposed of
7 Plaintiffs' arguments in Dennis, 520 F.3d at 1069. The Ninth Circuit explicitly held that a suit
8 under Section 1681i indeed requires a "prima facie showing of inaccurate reporting." Id. The Ninth
9 Circuit has explained that "[t]he inaccuracy requirement comports with the purpose of the FCRA,
10 which is 'to protect consumers from the transmission of inaccurate information about them.'"
11 Carvalho, 629 F.3d at 890 (quoting Gorman v. Wolpoff & Abramson, LLP, 584 F.3d 1147, 1157
12 (9th Cir. 2009)). Because Plaintiffs do not challenge that the disputed information was in fact
13 accurate, the Court grants Defendant's Motion for Summary Judgment and denies Plaintiffs'
14 Motion for Partial Summary Judgment accordingly.

15 Further, as a result of the grant of summary judgment in favor of Defendant, the Court does
16 not need to reach the arguments regarding class certification in Plaintiffs' Motion to Certify the
17 Class as Plaintiffs have not established a prima facie the FCRA claim for which a class may be
18 certified. The Motion to Certify is therefore also denied.

19 **VII. CONCLUSION**

20 **IT IS ORDERED** that Defendant's Motion for Summary Judgment (ECF No. 148) is
21 GRANTED.

22 **IT IS ORDERED** that Plaintiffs' Motion for Partial Summary Judgment (ECF No. 154)
23 is DENIED.

24 **IT IS ORDERED** that Plaintiffs' Motion to Certify Class (ECF No. 150) is DENIED.

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1 **IT IS ORDERED** that the Clerk of the Court is instructed to enter judgment in favor of
2 Defendant and close this matter accordingly.

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4 DATED: March 21, 2019.



6 **RICHARD F. BOULWARE, II**
7 **UNITED STATES DISTRICT JUDGE**